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August 7, 2020

**VIA ECF**

Hon. Douglas E. Arpert  
United States Magistrate Judge  
Clarkson S. Fisher Building & U.S. Courthouse  
Room 6000  
402 East State Street  
Trenton, NJ 08608

Re: **Lawson, et al. v. Praxair, Inc., et al.**  
**Civil Action No. 3:16-cv-02435-BRM-DEA**

Dear Judge Arpert:

As you know, we represent Defendants/Third-Party Plaintiffs Praxair, Inc., Praxair Distribution, Inc. and Praxair Distribution Mid-Atlantic LLC d/b/a GTS-Welco (collectively, "Praxair") in the above-referenced matter. During the status conference call with Your Honor on July 28, 2020, Your Honor instructed the parties to submit a joint proposed Case Management Order by August 7, 2020. Accordingly, the parties submit the following proposed discovery end dates:

**Praxair's Position**

As discussed during the status conference call, Praxair is scheduled to take the deposition of UMCPP's 30(b)(6) witness, Barbara Yost on August 12, 2020, and the deposition of UMCPP's fact witness, Joe Leone on September 15, 2020. As Praxair has previously advised the parties and the Court, Praxair will be in a better position to determine what additional depositions are needed of the hospital once UMCPP's 30(b)(6) deposition and the deposition of Mr. Leone are completed. As Praxair's prior letters to the Court outline, it is possible that Praxair may need to take ten (10) additional depositions of UMCPP's witnesses. ECF No. 309. Accordingly, Praxair is requesting an additional 60 days following Mr. Leone's September 15<sup>th</sup> deposition to complete any remaining depositions of UMCPP's witnesses. Based on Plaintiffs' position that no further extensions be granted beyond the 60 days, Praxair will begin

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working with UMCPP's counsel to schedule the remaining witnesses with the understanding that the depositions can be cancelled should Praxair elect not to proceed with them or that an additional short extension of time may be necessary based on the availability of the witnesses. As such, Praxair proposes the following Case Management Deadlines:

- Fact discovery: November 15, 2020
- Plaintiffs' expert disclosures and reports: January 15, 2021
- Defendants' expert disclosures and reports: February 15, 2021
- Third Party Defendants' expert disclosures and reports: March 15, 2021
- Expert depositions: May 15, 2021

### **Plaintiffs' Position**

As the Court knows, discovery in this matter is already protracted having started over four (4) years ago. While Plaintiffs acknowledge that additional time is needed to complete fact discovery, Plaintiffs seek to keep any further delays minimal and request that the remaining fact discovery be completed by November 15, 2020. Plaintiffs agree with the remaining deadlines set forth by the Praxair Defendants in this joint letter.

However, the UMCPP fact witnesses that the Praxair Defendants refer to in this letter by name, and the ten additional UMCPP witnesses, Praxair claim they need to depose were identified by Praxair in a joint letter to the court on October 25, 2019, over nine months (9) ago. These are depositions that Praxair could have taken at some point since October 2019 or at a minimum sought court intervention to compel. No additional time beyond November 15, 2020 is required for the depositions of these witnesses. Unless extraordinary circumstances arise, Plaintiffs are requesting that no further fact discovery extensions be granted beyond November 15, 2020, in this case.

### **Western's Position**

The Western Defendants ("Western") previously advised the Court in the parties' joint letter submission of April 22, 2020 that it independently intended to depose three witnesses employed by UMCPP at the time of the April 2014 incident. They are Dee Balasingham (nurse present in patient room); Jennifer Hollander (Director, Patient Care Services); and Lopa Patel – (Clinical Educator and GetWell System Manager). As stated during the June 2020 status conference, following the deposition of Ms. Yost and Mr. Leone, Western anticipates it will be able to better assess the need to conduct depositions of three aforementioned witnesses.

Western has also consented to three successive 14-day extensions of time to subpoena respondent ECRI Institute, most recently on July 29, 2020. As of that date, Western received a privilege log from UMCPP representing a portion of the responsive documents sourced from

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ECRI. Subject to the orders of the Court on relevant privileges, Western intends to pursue compliance with its subpoena to ECRI.

As to the Case Management Deadlines, Western joins in proposing the same dates as set forth by Praxair herein.

**UMCPPs Position**

UMCPP still must conduct the deposition of Joel Todaro, which we began on August 4, as scheduled, but had to suspend due to the storm (Hurricane Isaias), Ken Zusi (scheduled for August 19), Martin Frith and Michael Skrjanc (one of Praxair's 30(b)(6) witnesses). After completing those depositions, UMCPP may want to conduct the depositions of Don Recchio and Joe Honeck, both of which were previously noticed. In addition, after the completion of the already scheduled depositions, in particular the 30(b)(6) witnesses, there may be additional witnesses that UMCPP may want to depose. As a result, UMCPP does not object to the dates proposed by Praxair's counsel except that the November 15, 2020 deadline for fact discovery should not be a firm date, because the numerous additional depositions that Praxair states it may seek to conduct (which UMCPP may oppose) could be a challenge to complete by that time.

UMCPP respectfully suggests that the proposed fact discovery deadline of November 15, 2020, be put in place with the understanding that an additional 30 days may be required.

Thank you for your consideration.

Respectfully,

*s/Georgette Castner*

Georgette Castner

cc: All Counsel of Record (*via ECF*)